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OFFICE OF THE FOOD SAFETY COMMISSIONER, BIHAR

ORDER

The 6th November 2015

1. NO : FSC/22/2012-1268—WHEREAS, There is overwhelming evidence of harms from using chewing products like pan masala, gutka, scented arecanut, and flavoured tobacco products as additives in these like magnesium carbonate, aromatic flavourings, and including traces of tobacco and nicotine. The Hon'able Supreme Court has taken cognizance of the substantive evidence provided by the National Institute of Health & Family Welfare, New Delhi in the Ankur Gutka vs. Indian Asthma Care Society and Others (SLP Civil No: 16308/ 2007);

2. And WHEREAS, according to World Health Organization and Government of India's report - The Global Adult Tobacco Survey (2010); Bihar is among the largest consumer of tobacco with nearly 54% of the adult population using tobacco. The problem of tobacco use in Bihar is unique in the sense that nearly 49% people use tobacco in smokeless form or chewing tobacco. Many of these users are lifelong users and global studies suggest that nearly one in two of these will die prematurely due to a non-reversible tobacco-induced disease like cancers of the mouth, throat, larynx, esophagus, pancreas, among other deadly diseases. Tobacco use robs families of breadwinners and pushes them into poverty and destitution. According to a study done by Government of India and Public Health Foundation of India (PHFI), the health costs of treating diseases caused by tobacco use cost the Government of Bihar and its people Rs. 1341 crores in the year 2011. Most of this is borne by the poor who are not aware of the deadly effect of tobacco on health.

3. And WHEREAS, Tobacco, areca nut (beetelnut / supari), whether flavoured, scented or mixed with other ingredients such as nicotine, heavy metals, anti-caking agents (except to the extent specifically permitted as ingredients), silver leaf, binders, flavours, scents, fragrances, prohibited chemicals, or any one of these ingredients (the said ingredients are hereafter collectively

or individually, as the context requires, referred to as “the said additives”) are “food” under Section 3(j) of the Food Safety and Standards Act, 2006;

4. And WHEREAS, The harmful effects of tobacco, areca nut (beetelnut), and several of the additives, often found in the form of Gutka and Pan Masala, causes Acute Hyper-magnesemia, cardiac arrest, oral sub mucous fibrosis, oral cancer, Leukoplakia, Esophageal cancer, Stomach cancer, Metabolic abnormalities, reproductive health, Gastro intestinal and respiratory diseases

5. And WHEREAS, It is one of the primary duties of the State, intar alia, to improve public health, as a matter one of the directive principles as enshrined in the article 47 of the Constitution of India and, whereas, it implicitly includes the concept of provision of measures to be taken for prevention of deterioration of citizen’s health;

6. And WHEREAS, The Central and the State Governments and the Food Safety Commissioner are required to follow certain principles under chapter III of Food Safety and Standards Act, 2006, which includes an endeavour to achieve the appropriate level of protection of human life and health [(Sec. 18)(1)(a)] and, therefore, the conduct of these authorities is supposed to be always guided to tackle all the measures to safeguard human life;

7. And WHEREAS, The Food Safety Commissioner has a power coupled with a duty under Section 30(2) (a) of the Food Safety and Standards Act 2006 (“FSSA 2006”) to prohibit in the interest of public health, manufacture, storage, distribution or sale of any article of food;

8. And WHEREAS, after general inquiry of various scientific reports and opinions, it was noticed that Pan Masala, Flavoured / Scented Tobacco, Flavoured / Scented Supari and similar products containing either tobacco or areca nut (beetelnut), by whatsoever name called, cause immense damage to the health of consumers and their adverse impact could also lead to extremely deleterious effects on human health and well-being with consequential impact on society as well;

9. And WHEREAS, by Notification No. FSC/ 22 / 2012 / 221, Dated, 8th May, 2015 issued u/s 30(2) of FSSA 2006, the Commissioner of Food Safety in Bihar state had already prohibited the manufacture, storage, distribution or sale of Gutkha or Pan Masala, containing either tobacco and/or nicotine as ingredients, by whatsoever name these are available in the market and any other products marketed separately to constitute as Gutkha or Pan Masala containing tobacco and nicotine etc. as final products for one year;

10. And WHEREAS, A letter written by Special Secretary Government of India, Ministry of Health and Family Welfare, New Delhi dated 21st November 2012, to the Chief Secretaries of different States, requesting them to implement the provisions of the Food Safety and Standards Act, 2006 and the Regulations there under in the greater public interest with particular reference to the banning of food products containing tobacco and nicotine ;

11. And WHEREAS, The Central Government has prohibited products containing tobacco and nicotine in Regulations 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on sales) Regulations, 2011 and anti-caking agents (beyond the extent permitted) under Regulation 3.1.7 of The Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 ;

12. And WHEREAS, The said foods if consumed will endanger human health and welfare and whereas if consumption of these foods is allowed without prohibition the well being of current and future generations will be threatened ;

13. And WHEREAS, Indian Parliament has considered the importance of human health and therefore made the Commissioner Food Safety accountable to prohibit in the interest of public health the manufacture, storage, distribution or sale of any article of food, and whereas I am duly authorized and duty bound under section 30(2)(a) to make this order;

14. And WHEREAS,

- (i) The State Government of Assam has banned the manufacturing, advertisement, Trade, Storage, Distribution, Sale And Consumption of Zarda, Gutka, Panmasala Etc. Containing Tabacco and / or Nicotine by memo No. LGI-22/2013/49 dated 11th February, 2014.
- (ii) The State Government of Andhra Pradesh has banned the manufacturing, Storage, distribution, sale of Gutka, Panmasala, Chewing Tabacco products like Chap Tobacco, Pure Tobacco in sachets, Pouches, Khaini, Kharra, Scented Tabacco,

Flavoured Tabacco etc. by Notification No. 1378/F1/2013 dated 28 December, 2013.

- (iii) Dadar Nagar Haveli has banned the manufacturing Storage, distribution or sale of Chewing tabacco, with whatever names is may be known, such as Zarda etc. by Memo No. DMHS/DNH/FSSA/2012/363/964 Silvassa dated-06-03-2013.
- (iv) The State Government of Jammu & Kashmir has banned the manufacturing, Storage, distribution, sale, transportation, display or distribution of Gutkha by whatever name and Pan Masala, Zarda containing tabacco or nicotine as ingredients by whatsoever name with immediate effected by Memo No. SRO68 dated-06th March, 2013.
- (v) The State Government of Manipur has banned the manufacturing, Storage, Transportationa, distribution, display, sale and purchase of Gutkha, Khaini, Zarda, Pan Masala and other chewable, smokeless tobacco products containing tobacco or nicotine food ingredients as unsafe food injurious to health by Mome No. 15/52/88-M(FSSA) dated 26th February, 2013.
- (vi) The State Government of Mizoram has banned the sale Gutkha, Pan Masala, Zarda or other chewable Products Containing tobacco and nocotine by Memo No. J.11011/28/2012-HFW dated 22th Aug., 2012.
- (vii) The State Government of Punjab has banned the manufacturing, the storage, the sale or the distribution of Gutkha and Pan Masala and any other food products containing tobacco or Nicotine by Memo No. 11/10/12-3HB4/2524.
- (viii) The State Government of Kerala has banned the manufacturing, storage, the sale or the distribution of Gutkha and PanMasala Containing tobacco or nicotine as ingredients, by whatsover name by Memo No. A/1327/2012/CFS dated 22-05-2012.
- (ix) The State Government of West Bengal has banned the manufacture, storage, distribution or sale of tobacco and areca nut (beetelnut / supari) which is either flavoured, scented or mixed with any of the said additives, and whether going by the name or form of gutka, pan masala, flavoured / scented tobacco, Zarda, flavoured / scented supari or otherwise by whatsoever name called, whether packaged or unpackaged and / or sold as one product, or though packaged as separate products, containing tobacco and nicotine by Memo No. 112/HF/CFS/1M-6/2012(Pt) dated 29th Sep., 2014. The Regulations 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on sales) Regulations, 2011;

15. Therefore I, Brijesh Mehrotra, the Commissioner of Food Safety, Government of Bihar, prohibit in the interest of public health for a period of one year from 7th November, 2015, the manufacture, storage, distribution or sale of that type of tobacco and areca nut (beetelnut / supari) which is either flavoured, scented or mixed with any of the said additives, and whether going by the name or form of pan masala, flavoured / scented tobacco, Zarda, flavoured / scented supari or otherwise by whatsoever name called, whether packaged or unpackaged and / or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer.

By Order,
BRIJESH MEHROTRA,
Commissioner of Food Safety.